



Guide for Assessing an Applicant’s History of Criminal Legal System Involvement for State-Funded Housing

This document gives housing providers guidance for applying New York State’s anti-discrimination policies when assessing criminal legal system-involved applicants for state-funded housing. These anti-discrimination policies are found at 9 NYCRR §1627.72 (New York funded public housing); New York State Housing Finance Agency Fair Housing and Tenant Selection Guidelines, §4.1.2.2. (July 2019 Revision); Management Bulletin Memorandum 2016-B-04; and Capital Programs Manual § 7.06. New York State Homes and Community Renewal does not require that housing providers conduct criminal background checks on applicants to state-funded housing. However, if a housing provider elects to conduct background checks, it must do so in accordance with this policy.

Along with this guide, housing providers that elect to conduct background checks must use the accompanying worksheet (explained in depth below) to make their determination. The worksheet can be found at the following link: <https://hcr.ny.gov/feho-worksheet-criminal-convictions>

More information about tenant assessment policies can be found here:

<https://hcr.ny.gov/marketing-plans-policies#credit-and-justice-involvement--assessment-policies>.

General Policies

The housing provider may only consider prior criminal convictions. Prior or pending arrests and/or accusations that did not result in a conviction may not be considered. Any convictions that have been excused by pardon, overturned on appeal or otherwise vacated may not be considered.

- ❖ Pursuant to Section 269(16) of the New York State Human Rights Law, it is unlawful to inquire about or deny housing to an Applicant on the basis of: (a) any prior arrests or criminal accusations that have been resolved in the Applicant’s favor; (b) youthful offender adjudications; (c) pending arrests with adjournments in contemplation of dismissal; (d) convictions for violations sealed pursuant to Section 160.55 of the New York State Criminal Procedure Law; (e) convictions for violations sealed pursuant to Section 160.57 of the New York State Criminal Procedure Law; and (f) convictions sealed pursuant to Section 160.58 or 160.59 of the New York State Criminal Procedure Law. Under New York State law, an Applicant that is asked about such a protected arrest, conviction or adjudication may answer as if it never occurred.
- ❖ The housing provider may only consider convictions for offenses that (1) are not those listed above, (2) involved physical danger or violence to persons or property or that adversely affected the health, safety and welfare of other people, (3) that fall within the relevant lookback period set forth in Section 3 below, and (4) that occurred after the applicant reached 18 years of age.
- ❖ If the Applicant is able to provide a certificate of relief from disabilities or good conduct that is permanent and covers housing, the Applicant may not be denied housing



on the basis of a history of criminal legal system involvement.

- ❖ Even where convictions for such offenses exist, those convictions cannot be an automatic bar to the Applicant being selected for housing. The housing provider must do an individualized assessment of all Applicants.
- ❖ In this assessment, no one factor can be considered in isolation; the interplay between the factors must be taken into account (e.g., a reviewer may look for stronger evidence of rehabilitation if an Applicant has a more serious crime).
- ❖ When conducting a background check of an Applicant, the housing provider must use a reputable background check company. Further, the housing provider must comply with the requirements of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et. seq.
- ❖ The housing provider must provide the Applicant with an application that includes information that explains the procedures and policies with regard to background checks, the Applicant's right to review, contest, and explain the information contained in the background check, and the Applicant's right to present evidence of rehabilitation.
- ❖ These guidelines must be followed by anyone who determines tenant eligibility, including, but not limited to, case managers, project managers, clerks, or independent contractors.
- ❖ Part M of the Housing Stability and Tenant Protection Act of 2019 limits the fee amount that housing providers may charge a household in connection with reimbursing the cost of a background check and credit check. The fee amount is limited to the actual cost of the background check and credit check or \$20 (cumulatively), whichever is less, and must be waived if the Applicant can provide a copy of a background or credit check that was conducted within the past 30 days. Certain programs administered by HCR have more stringent requirements than those set forth in the Housing Stability and Tenant Protection Act.

Policies Regarding Record Keeping and the Applicant's Opportunity to Review the Record

- ❖ The housing provider must maintain records of all Applicants and applications for a minimum of two years.
- ❖ All Applicants must be given an opportunity to review and explain a conviction record to the housing provider before any decision regarding tenancy is made. The Applicant must be given no less than 14 business days to provide more information regarding a conviction prior to a determination being made. A sample information request letter (along with translations) can be found here: <https://hcr.ny.gov/marketing-plans-policies#credit-and-justice-involvement-assessment-policies> .
- ❖ If an application is denied, the Applicant must be provided with any documentation used to deny their application (including a copy of the Worksheet), an explanation of the denial of housing, and be given an opportunity to respond/appeal.
- ❖ The applicant must be given at least 14 business days from receipt of the notice of rejection (along with documentation) to appeal the rejection.



- ❖ The housing provider must complete and maintain the accompanying worksheet for use in the decision-making process.
- ❖ The records maintained shall include, but not be limited to:
 - A copy of the original application;
 - A copy of the conviction record and other material obtained in connection with evaluating the application;
 - Written notification to the Applicant that he or she has the right to provide additional information and evidence of rehabilitation, as well as confirmation that the Know Your Rights material was sent to the Applicant.
 - A copy of any information provided by the Applicant in response to the initial determination, or as evidence of rehabilitation;
 - A copy of the Applicant’s appeal, if applicable, including any material the Applicant submitted to appeal the denial, or to complain about an unsuccessful appeal;
 - The written evaluation detailing the analysis and decision of the housing provider, and;
 - The Worksheet associated to these guidelines.

Factors That Must be Considered and Using the Worksheet

New York State Homes and Community Renewal does not require that housing providers conduct a background check on applicants to state-funded housing. If a housing provider elects to conduct criminal background checks, it must do so in compliance with this policy and utilizing the attached mandatory worksheet. HCR has worksheet serves two important purposes. First, it creates a record of the decision-making process the housing provider undertook when deciding whether to accept or reject an Applicant. This permits the Applicant to understand the basis for the decision, and helps the housing provider to make consistent decisions. Second, the worksheet will help guide housing providers through the decision-making process to ensure the consideration of the relevant factors.

Section 1: Automatic Bars to Admission

There are two circumstances for which the Applicant’s criminal legal system involvement will automatically make them ineligible for the housing accommodation. If the Applicant was convicted for producing methamphetamine in the home, or is required to be a lifetime registrant on the Sex Offender registry, it is New York State policy, in accordance with Federal Department of Housing and Urban Development (“HUD”) rules, that such Applicant is ineligible for acceptance by the housing provider. If either of these circumstances are present, the application must be denied, and the analysis can stop here.

Section 2: Nature of Criminal Legal System Involvement

Question 1: Are the incidents (a) prior arrests or criminal accusations that have been resolved in the applicant's favor, (b) youthful offender adjudications, (c) pending arrests with adjournments



in contemplation of dismissal or (d) sealed convictions as set forth in NYS Human Rights Law § 296(16)?

Not all criminal convictions may be considered. Under Section 269(16) of the New York State Human Rights Law, it is unlawful to inquire about or deny housing to an Applicant on the basis of: (a) any prior arrests or criminal accusations that have been resolved in the Applicant’s favor; (b) youthful offender adjudications; (c) pending arrests with adjournments in contemplation of dismissal; or (d) sealed convictions as set forth in NYS Human Rights Law NYS Human Rights Law § 296(16).

Question 2: Are the incidents pending arrests (recent arrests that have not yet been resolved through the judicial process)?

Pursuant to this policy, housing providers may not consider any pending arrests.

Question 3: Does the applicant have a certificate of relief from disabilities or good conduct in relation to the specific offense that is permanent and covers housing?

A Certificate of Relief from Disabilities and a Certificate of Good Conduct are certificates that may be issued by the courts or DOCCS. A Certificate of Relief from Disabilities is meant to “remove any mandatory legal bar on disability imposed as a result of conviction of the crime or crimes specified in the certificate,” which can include one felony or any number of misdemeanors. Similarly, a Certificate of Good Conduct is issued after a minimum period of time has elapsed from the date of release from custody, and has the same effect as the Certificate of Relief from Disabilities. These certificates are meant to “remove certain Collateral Consequences of a criminal conviction,” including “bars to applying for jobs, licenses, public housing and more.” In other words, the express purpose of the Certificates is to eliminate the negative effects of a criminal conviction on housing, among other things.

If the applicant has a permanent certificate of relief from disabilities or good conduct that covers housing, the applicant may not be denied. If the applicant has a temporary certificate of relief from disabilities or good conduct, or a certificate that does not cover housing, it may be considered as a positive factor in assessing rehabilitation, as set forth in Section 3 below.

Question 4: Did the crime[s] for which the applicant was convicted involve physical violence to persons or property, or adversely affected the health, safety and welfare of other people?

Beyond these, the only convictions that may be considered are convictions for offenses that (a) involved physical violence to persons or property, or that (b) adversely affected the health, safety and welfare of other people. These categories of crimes are relevant because they relate to the behavior expected of a tenant, which is to live peaceably alongside other tenants, and to respect their property. If a person’s record of conviction(s) does not fall into either category, then the analysis is over, and a person’s conviction should not be factored in considering his or her application for tenancy.

There is no list of what crimes fit into these categories. Interpretation of whether a crime fits the above criteria is left to the reviewer’s judgment, which the reviewer should articulate in the



worksheet.

Question 5: Was the applicant under the age of 18 at the time of the offense[s]?

A reviewer is required to take the age of the Applicant at the time of the crime into account. In no case may a reviewer reject an Applicant for an offense committed before the applicant turned 18 years old.

Question 6a: If the applicant was convicted of a misdemeanor, was the applicant convicted more than one year ago?

If the applicant was convicted of a misdemeanor more than one year ago, it may be the case that the applicant may not be rejected on the basis of this conviction. The reviewer must proceed to Question 6b to assess when the applicant was released from supervision.

Question 6b: Has the applicant been under supervision (e.g., probation, incarceration) within the last year?

If the applicant was released from supervision (e.g., probation, incarceration) more than one year ago, the applicant may not be rejected on the basis of this conviction.

Question 7a. If the applicant was convicted of a felony, was the applicant convicted more than five years ago?

If the applicant was convicted of a felony more than five years ago, it may be the case that the applicant cannot be rejected on the basis of this conviction. The reviewer must proceed to Question 7b to assess when the applicant was released from supervision.

7b: Has the applicant been under supervision (e.g., probation, parole, incarceration) within the last year?

If the applicant was released from supervision (e.g., parole, probation, incarceration) more than one year ago, the applicant may not be rejected on the basis of this conviction.

Question 8: How much time has passed since the Applicant's date of the conviction and how much time has the Applicant spent in the community after release from incarceration, if they were incarcerated as a result of the conviction(s)?

If the conviction or incarceration/supervision occurred within the lookback periods set forth in Questions 6 and 7 above, it is not grounds for automatic rejection. Rather, the reviewer must engage in an individualized assessment of the applicant. The reviewer is trying to determine whether the applicant has had enough time in the community and has used that time productively to establish themselves as a qualified tenant. Part of this analysis is a consideration of facts gathered in Section 3, about what the person has done in the community since release from incarceration/supervision or since the time of conviction if the person was not incarcerated.



Question 9: What was the age of the applicant at the time of their conviction?

As set forth in Question 5 above, in no case may an applicant be denied on the basis of an offense committed before the applicant turned 18 years old. The reviewer must evaluate offenses committed between the ages of 18 and 25 with the understanding that individuals who exercise poor judgment as youths or young adults very often mature into law abiding productive adults. On the other hand, if a person was convicted as an older person this does not, in itself, present a barrier to tenancy.

Question 10: What is the seriousness of the Applicant's offense?

The reviewer must evaluate the seriousness of the offense and its relevance to the person's current ability to live peaceably alongside other tenants and respect their property. Again, this factor is not considered in isolation, but alongside other factors such as the passage of time and evidence of rehabilitation.

Section 3: Evidence of Rehabilitation and Good Conduct

There are a number of areas to explore, including:

A: Treatment Completion

The applicant may put forth evidence of successful completed treatment for drugs or alcohol, or for other conditions that may have contributed to their criminal behavior. This can be a positive factor in considering the application. On the other hand, it should not be assumed that a person has a drug or alcohol problem for which they needed to seek treatment, and therefore lack of completion of such treatment be considered a negative factor. Rather, lack of evidence of treatment completion should be considered neutrally. Since treatment information is subject to HIPAA regulations, this information should be volunteered by the Applicant, not required, and maintained in a manner to ensure the privacy of the Applicant.

B: Rehabilitative Programming

This factor considers whether the applicant has participated in and completed other types of rehabilitative programming, during or after incarceration. Examples of such programming include vocational, educational, work or therapy programs. Completion of such factors is a positive factor in considering the application.

C: Certificate of Relief from Disabilities or Certificate of Good Conduct

As set forth in Section 2 above, if the applicant has a certificate of relief from disabilities or good conduct in relation to the specific conviction, and the certificate is permanent, and the certificate covers housing, the applicant may not be rejected on the basis of that conviction. If the certificate is temporary or does not cover housing the certificate should be considered a positive factor in assessing rehabilitation. If a certificate of relief from disabilities or good conduct is not submitted, it cannot be used against the applicant.



D: *Employment Status*

This factor looks at whether the applicant has sought and maintained employment after their conviction or release from incarceration, which is a positive factor not only for this analysis but for assessing the applicant’s financial eligibility for tenancy.

E: *Volunteer or Community Activities*

This factor considers examples of community engagement or volunteer work undertaken by the applicant, which speak to how the applicant has been productively spending their time, particularly if the applicant has had difficulty finding employment.

F: *Community Recommendations*

If the applicant provides recommendations from community members, list the recommendations on the worksheet and attach them to the application and review packets.

Recommendations can be provided by any member of the community, including, but not limited to: clergy, parole supervisors, residents, neighbors, landlords (note: recommendations can be provided from a prior landlord, but are not mandatory; an applicant’s failure to provide a recommendation from their landlord cannot be used against them), educators and employers. These are a positive factor in assessing tenancy.

G: *Mitigating Factors*

The applicant may provide a narrative or information explaining the circumstances under which the offense was committed, and what has occurred since then, that may mitigate the severity of the conviction.

H: *Other Relevant Factors*

The above list of factors is not exhaustive. If there are any other rehabilitative efforts that may be relevant, list them here.